

EXHIBIT 23

(Redacted)

(Previously Filed Under Seal as DI 504-1)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

FAIR ISAAC CORPORATION,

Plaintiff,

v.

FEDERAL INSURANCE COMPANY, and
ACE AMERICAN INSURANCE COMPANY

Defendants.

Case No. 16-CV-1054(WMW/DTS)

**EXPERT REPORT OF
NEIL J. ZOLTOWSKI
WITH RESPECT TO DAMAGES**

Respectfully submitted this 19th day of April, 2019

A handwritten signature in black ink, appearing to read "Neil J. Zoltowski", is written above a horizontal line.

CONFIDENTIAL – ATTORNEYS’ EYES ONLY

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ASSIGNMENT.....	2
III.	INFORMATION CONSIDERED	2
IV.	BACKGROUND	3
	A. Parties.....	3
	<i>i.</i> FICO	3
	a) Blaze Advisor Software	3
	b) Copyrights for Blaze Advisor	4
	<i>ii.</i> Chubb Corporation – Pre-Acquisition	5
	a) Federal.....	6
	b) Chubb & Son.....	6
	<i>iii.</i> Chubb Limited – Post-Acquisition	7
	a) Federal.....	8
	b) ACE American.....	8
	<i>iv.</i> Change of Federal Ownership – Post Acquisition.....	9
	<i>v.</i> A Single Economic Unit	10
	a) Consolidation of Federal and ACE American Financial Statements.....	10
	b) Parent and Subsidiary Relationships.....	11
	c) Pooling Agreements.....	12
	d) Consolidated Income Tax Returns – Post Acquisition	16
	e) Economic Benefits of Single Economic Unit	16
	B. Software License and Maintenance Agreement	17
	<i>i.</i> Original Agreement	17
	<i>ii.</i> Amendments	18
	<i>iii.</i> FICO Professional Services Provided to Federal.....	19
	C. Defendants’ Pervasive Use of Blaze Advisor.....	20
	<i>i.</i> Federal/Chubb – Pre-Acquisition	20
	<i>ii.</i> Federal/ACE American – Post-Acquisition.....	21
	D. Termination of Agreement.....	21
V.	SUMMARY OF FICO’S ALLEGATIONS	22
	A. Breach of SLM Agreement.....	22
	<i>i.</i> Pre-Acquisition Distribution of Blaze Advisor.....	22
	<i>ii.</i> Post-Termination Use of Blaze Advisor	23
	B. Copyright Infringement	24
	<i>i.</i> Pre-Acquisition Unlicensed Distribution of Blaze Advisor.....	24
	<i>ii.</i> Post-Termination Use of Blaze Advisor	24

Table 1: Summary of FICO Copyrights on Blaze Advisor

Version	Registration Number	Registration Date
3.0	TX0006301747	3/23/2006
4.0	TX0006301748	3/23/2006
5.0	TX0006301746	3/23/2006
6.0	TX0006301745	3/23/2006
6.5	TX0006595049	8/27/2007
6.5.5	TX0007622453	1/10/2013
6.6	TX0007622554	1/10/2013
6.7	TX0007622555	1/10/2013
6.8.1	TX0007622557	1/10/2013
6.9	TX0007622556	1/10/2013
7.0	TX0007504713	2/14/2012
7.2	TX0007776962	8/2/2013

ii. Chubb Corporation – Pre-Acquisition

14. With principal executive offices in Warren, New Jersey, Chubb Corporation (“Chubb Corp”) was an international “holding company for several, separately organized, property and casualty insurance companies,” generally referred to as the Chubb Group of Insurance Companies (“Chubb P&C Group”).¹⁴ The Chubb P&C Group provided property and casualty (“P&C”) insurance to individuals and businesses, and as of 2013, was the largest P&C group, collectively, in the U.S. based on net premiums written.¹⁵

15. The Chubb P&C Group was organized into three business units, comprising of (i) Chubb Personal Insurance (36% of net premiums written) (ii) Chubb Commercial Insurance (43%), and (iii) Chubb Specialty Insurance (21%).¹⁶ (See **Schedule 18.1**). Chubb Personal Insurance offered insurance products for homes and valuables, especially for high net worth individuals, yachts and fine automobiles as well as personal liability insurance.¹⁷ Chubb Commercial Insurance offered a variety of products but specialized in certain industry segments and niches and had a customer

¹⁴ Deposition of John Taylor, dated August 2, 2019 (“Taylor Deposition”) at Exhibit 17 (The Chubb Corporation 2014 Form 10-K at 3).

¹⁵ Taylor Deposition at Exhibit 17 (The Chubb Corporation 2014 Form 10-K at 3).

¹⁶ Taylor Deposition at Exhibit 17 (The Chubb Corporation 2014 Form 10-K at 4).

¹⁷ Taylor Deposition at Exhibit 17 (The Chubb Corporation 2014 Form 10-K at 4).

base largely of mid-sized businesses.¹⁸ Chubb Specialty Insurance primarily consisted of “directors and officers liability insurance, errors and omissions liability insurance, employment practices liability insurance, fiduciary liability insurance and commercial and financial fidelity insurance.”¹⁹

16. The Chubb P&C Group offers its products primarily through independent insurance agencies and “accepts business on a regular basis from insurance brokers.”²⁰ These agents and brokers typically also offered insurance products from Chubb Corp competitors.²¹

a) *Federal*

17. Before ACE Limited acquired Chubb Corp, Federal was “the largest insurance subsidiary in the Chubb P&C Group and was the parent of most of [Chubb Corp’s] other insurance subsidiaries.”²² **Schedules 14.1 and 14.2** are summaries of the Federal wholly-owned subsidiaries as they were organized by Chubb Corp.

18. Through its division, Chubb & Son, Federal had, and still has, the authority to underwrite, effect and issue all the insurance policies that are in the names of Federal’s wholly-owned subsidiaries in the U.S and certain other countries.²³

b) *Chubb & Son*

19. Chubb & Son was the “manager of several U.S. subsidiaries in the [Chubb P&C Group] ...[but] also provid[ed] certain services to other insurance companies” in the same group.²⁴ Chubb

¹⁸ Taylor Deposition at Exhibit 17 (The Chubb Corporation 2014 Form 10-K at 4).

¹⁹ Taylor Deposition at 24-25 and Exhibit 17 (The Chubb Corporation 2014 Form 10-K at 4). Specialty insurance also includes coverage for professionals such as malpractice for accountants, attorneys and lawyers.

²⁰ Taylor Deposition at Exhibit 17 (The Chubb Corporation 2014 Form 10-K at 5).

²¹ Taylor Deposition at Exhibit 17 (The Chubb Corporation 2014 Form 10-K at 5).

²² Taylor Deposition at 17 and Exhibit 18 (The Chubb Corporation 2014 Form 10-K at 3).

²³ Taylor Deposition at 54-67 and Exhibit 20 (Texas Pacific Indemnity, FED013548_0001-008), Exhibit 21 (Vigilant, FED013549_001-011), Exhibit 22 (Chubb Indemnity, FED013541_0001-010), Exhibit 23 (Chubb National, FED013542_0001-008), Exhibit 24 (Executive Risk Specialty, FED013545_0001-011), Exhibit 25 (Executive Risk Indemnity, FED013544_0001-010), Exhibit 26 (Great Northern, FED013546_0001-008), Exhibit 27 (Chubb New Jersey, FED013543_0001-008), Exhibit 28 (Chubb Illinois and Chubb Custom, FED013554_0001-002) and Exhibit 29 (Chubb Lloyds, FED013553_0001-004). Texas Pacific Indemnity has not existed since Chubb Corp was acquired by ACE Limited. As a result, Chubb & Son no longer services it. All of Texas Pacific Indemnity is now under Pacific Indemnity.

²⁴ Taylor Deposition at 17, 37, 44 and Exhibit 18 (The Chubb Corporation 2014 Form 10-K at 3). After Chubb Corp was acquired by ACE Limited, Chubb & Son remained the only division of Federal.

& Son managed the day-to-day operations as well as the operating personnel for these subsidiaries.²⁵ In connection with these services, Chubb & Son had management and service agreements with Federal's subsidiaries that described the services it would provide.²⁶ All of the personnel that provided these services were employed by Federal, so "Federal, through its employees, managed and serviced those subsidiaries."²⁷

20. Chubb & Son had administrative offices in New Jersey as well as local offices across the United States that helped to produce and service Chubb P&C Group businesses.²⁸ This organizational structure was designed to be more efficient by taking advantage of economies of scale and offering more flexibility than alternative structures.²⁹

iii. Chubb Limited – Post-Acquisition

21. On January 14, 2016, ACE Limited completed the acquisition of Chubb Corp for approximately \$29.8 billion in cash, stock and equity awards (the "Acquisition").³⁰ Prior to the Acquisition, ACE Limited formed a "wholly-owned subsidiary called ACE INA Holdings, Inc. for the purpose of effectuating the merger transactions with The Chubb Corporation."³¹ ACE Limited also changed its name to Chubb Limited and "plann[ed] to adopt the Chubb name globally, although some subsidiaries may continue to use ACE as part of their names."³² Chubb Corp ceased to exist, and was "merged with a newly-formed subsidiary of Chubb Limited [ACE INA Holdings, Inc.], and the combined company is operating under the Chubb name globally."³³

²⁵ Taylor Deposition at 17 and Exhibit 18 (The Chubb Corporation 2014 Form 10-K at 3).

²⁶ Taylor Deposition at 40.

²⁷ Taylor Deposition at 40, 43-44, 76. Post-acquisition, Federal continues to service all its subsidiaries, but no longer employs any of the personnel.

²⁸ Taylor Deposition at Exhibit 17 (The Chubb Corporation 2014 Form 10-K at 5).

²⁹ Taylor Deposition at 17 and Exhibit 18 (The Chubb Corporation 2014 Form 10-K at 3). Chubb & Son is a division and not a legal entity, so it cannot have any subsidiaries.

³⁰ FICO0056295-556 at 342.

³¹ Federal Insurance Company's Response to Plaintiff's First Set of Requests for Admission, Response No. 2, dated May 11, 2017.

³² FICO0056295-556 at 461; Federal Insurance Company's Response to Plaintiff's First Set of Requests for Admission, Response No. 4, dated May 11, 2017.

³³ FICO0056295-556 at 461; Federal Insurance Company's Response to Plaintiff's First Set of Requests for Admission, Response Nos. 3, 5, dated May 11, 2017.

22. Chubb Limited changed its business lines reporting structure to the following categories: agriculture; global insurance; personal; surety; large, medium and small commercial.³⁴ (See **Schedule 18.2**).

a) *Federal*

23. Federal is now a wholly-owned subsidiary of Chubb INA Holdings, Inc. (f/k/a ACE INA Holdings, Inc.).³⁵ Chubb Limited also partially reorganized the subsidiaries reported under Federal in the Chubb Limited public financial statements. Since the Acquisition in 2016, Federal has been Chubb Limited's largest insurance subsidiary in terms of premium revenue.³⁶ Federal has sold and continues to sell insurance products for the personal, commercial and specialty lines of business in the U.S. through a series of independent agencies and brokers.³⁷ **Schedules 14.3, 14.4 and 14.5** are summaries of Federal's subsidiaries after the Acquisition, and all of them sell personal, commercial and specialty insurance in the United States.³⁸

b) *ACE American*

24. ACE American is now a wholly-owned subsidiary of INA Holdings Corporation, which is a subsidiary of INA Corporation.³⁹ INA Corporation is an indirect wholly-owned subsidiary of Chubb INA Holdings, Inc., Federal's parent company.⁴⁰

25. On March 14, 2016, ACE American and Federal entered into a services agreement under which ACE American was to provide services to Federal, Federal subsidiaries and certain affiliates that were previously performed by Chubb & Son ("ACE Services Agreement").⁴¹ Federal and ACE American amended the ACE Services Agreement on February 22, 2018, so ACE American could

³⁴ Taylor Deposition at 27.

³⁵ Defendant's Response to Plaintiff's Second Set of Requests for Admission, Response No. 15, dated January 29, 2018.

³⁶ Taylor Deposition at 17.

³⁷ Taylor Deposition at 24-25, 34, 36. These lines of business are synonymous with Chubb Corp personal, commercial and specialty insurance.

³⁸ Taylor Deposition at 25-26.

³⁹ Taylor Deposition at Exhibit 37 (FED000058_0001-12 at 007).

⁴⁰ FED000058_0001-0012 at 0004, 0006-7.

⁴¹ Taylor Deposition at 70-78 and Exhibit 32 (FED013551_001-012 at 001-003, 012). Chubb Lloyd's is an affiliate rather than a subsidiary of Federal. The agreement also stated that ACE American would provide services for Great Northern and Executive Risk Indemnity even though both were no longer Federal subsidiaries.

“provide such services directly” to nine (9) “other insurance companies as a subcontractor of Federal.”⁴²

26. All the Federal pre-acquisition employees became ACE American employees after the Acquisition, and Federal “no longer has employees” as of January 1, 2017.⁴³ **Schedules 15.1, 15.2 and 15.3** are summaries of ACE American’s subsidiaries after the Acquisition.

iv. Change of Federal Ownership – Post Acquisition

27. In connection with the Acquisition, Federal changed owners from Chubb Corp to Chubb Limited (f/k/a ACE Limited) and is wholly-owned by Chubb INA Holdings, Inc. (f/k/a ACE INA Holdings, Inc.), a subsidiary of Chubb Limited into which Chubb Corp was merged.⁴⁴ As previously explained, Chubb Corp ceased to exist when it was merged with and into ACE INA Holdings, Inc.⁴⁵ Federal also became an indirect subsidiary of Chubb Limited and is now its largest insurance subsidiary in terms of premium revenue.⁴⁶

28. Also, as previously explained, by January 1, 2017, all of Federal’s pre-acquisition employees became ACE American employees.⁴⁷ Under the terms of the ACE Services Agreement and subsequent amendments, ACE American (rather than Chubb & Son) now provides services to Federal, Federal’s subsidiaries and members of Federal’s pool (defined hereafter).⁴⁸

29. This change in ownership is also reflected in the boards of directors for Chubb Corp (pre-acquisition) and Chubb Limited (post-acquisition). Specifically, the Chubb Corp board of directors

⁴² Taylor Deposition at Exhibit 32 (FED013551_001-012 at 001-002).

⁴³ Taylor Deposition at 76. Although the management and services agreements between Chubb & Son and Federal’s subsidiaries are still in effect, by January 2017, Federal no longer had any employees and Addendum A to Exhibit 32 (FED013551_001-012 at 012) lists substantially the same services that Chubb & Son was providing.

⁴⁴ Federal Insurance Company’s Response to Plaintiff’s First Set of Requests for Admission, Response Nos. 3,5-7, dated May 11, 2017.

⁴⁵ Federal Insurance Company’s Response to Plaintiff’s First Set of Requests for Admission, Response No. 3, 5, dated May 11, 2017.

⁴⁶ Taylor Deposition at 17.

⁴⁷ Taylor Deposition at 76. Although the management and services agreements between Chubb & Son and Federal’s subsidiaries are still in effect, by January 2017, Federal no longer had any employees and Addendum A to Exhibit 32 (FED013551_001-012 at 012) lists substantially the same services that Chubb & Son was providing.

⁴⁸ Taylor Deposition at 70-78 and Exhibit 32 (FED013551_001-012 at 001-003 and 012). Chubb Lloyd’s is an affiliate rather than a subsidiary of Federal. The agreement also stated that ACE American would provide services for Great Northern and Executive Risk Indemnity even though both were no longer Federal subsidiaries.

was comprised of fourteen (14) directors as of December 2014.⁴⁹ After the Acquisition in January 2016, only three (3) of these fourteen (14) legacy Chubb Corp directors joined the Chubb Limited board, which increased from seventeen (17) in December 2015 to sixteen (16) members in December 2016.⁵⁰ All of the remaining thirteen are legacy ACE Limited directors.⁵¹ (See **Schedule 17.0**).

v. A Single Economic Unit

a) *Consolidation of Federal and ACE American Financial Statements*

30. The financial results of Defendants, the corresponding subsidiaries of both, and the related Chubb entities are consolidated with Chubb INA Holdings, Inc. and Chubb Limited (i.e., the ultimate parent) to reflect that the combinations of parents plus subsidiaries are, in fact, a single economic unit. The Financial Accounting Standards Board (“FASB”), the authoritative accounting organization in the United States, requires that subsidiaries are consolidated with parent companies because financial statements are intended to reflect the economic realities of businesses. These economic relationships are defined by the parent’s corporate structure and financial interest (e.g., percent ownership) in each subsidiary.⁵² With respect to Defendants, both Federal and ACE American are currently direct (Federal) and indirect (ACE American) subsidiaries of Chubb INA Holdings, Inc., and both are also parents of several subsidiaries, all of which roll up and are reported in total with Chubb Limited.⁵³

31. The FASB guidance on consolidation states that a controlling financial interest is a “condition pointing toward consolidation” of the financial results of a parent and subsidiary.⁵⁴ One reason is that consolidated financial statements disclose information about the assets and liabilities

⁴⁹ FICO0056279-294 at 292 (Chubb Corporation Annual Report 2014).

⁵⁰ FICO0056295-556 at 317, 336 (Chubb Limited Annual Report 2015); FICO0056279-294 at 292 (Chubb Corporation Annual Report 2014); ACE Limited Annual Report 2014 at 22; FICO0056861-7120 at 6910 (Chubb Limited Annual Report 2017). Sheila Burke, James Cash and James Zimmerman were the legacy Chubb Corp members.

⁵¹ ACE Limited Annual Report 2014 at 22; FICO0056861-7120 at 6910 (Chubb Limited Annual Report 2017).

⁵² FASB Accounting Standards Codification 810 – Consolidated Financial Statement Scope and Scope Exceptions 810-10-15-8. According to FASB, a subsidiary is an entity in which the parent company has a controlling financial interest (e.g., either through voting rights or other means such as variable interests).

⁵³ See, generally, Taylor Deposition at Exhibit 40 (Chubb Limited 2017 Form 10-K Exhibit 21.1).

⁵⁴ FASB Accounting Standards Codification 810 – Consolidated Financial Statement Scope and Scope Exceptions 810-10-15-8.

(e.g., investments, cash, revenue and debt) of a parent and its subsidiaries. This allows the parent company to present a holistic view of its financial position and operational results. According to FASB, consolidated, as opposed to individual, financial statements are necessary to provide owners and creditors a more meaningful and fair representation of the parent company.⁵⁵

32. In addition to the reporting requirements promulgated by FASB, the National Association of Insurance Commissioners (“NAIC”) also requires reporting entities to disclose their subsidiaries on at least a quarterly basis. Specifically, I understand an entity’s NAIC annual statement identifies the reporting entity’s parent, subsidiaries and affiliates. The NAIC annual statement also summarizes the financial performance and operational results (e.g., premiums, cash flow, losses) of the reported entity in a consolidated manner with its subsidiaries and affiliates.⁵⁶ This consolidation of financial results is similar to the accounting reporting requirements promulgated by FASB, which suggests that they serve similar purposes to consolidation for external financial reporting.

b) *Parent and Subsidiary Relationships*

33. Before the Acquisition, Federal had eleven (11) domestic and eight (8) foreign subsidiaries that Chubb Corp reported on a consolidated basis in 2014.⁵⁷ All except one (1) were wholly-owned by Federal, and of these nineteen (19) subsidiaries, I understand several wrote and issued insurance policies with applications using Blaze Advisor between 2013 and 2019. (See **Schedules 12.0, 14.1 and 14.2**).

34. Since the Acquisition, Chubb Limited’s financial statements have included the financial results of both Federal and ACE American.⁵⁸ Federal has seven (7) domestic and five (5) foreign subsidiaries that Chubb Limited reports on a consolidated basis in 2018.⁵⁹ All except one (1) are

⁵⁵ FASB Accounting Standards Codification 810 – Consolidated Financial Statement, Overall General 810-10-10-1 and 810-10-45-1.

⁵⁶ See, generally, 2016 Federal NAIC Annual Statement at 14.5-14.7.

⁵⁷ Taylor Deposition at 18, 74 and Exhibit 18 (The Chubb Corporation 2014 Form 10-K at 3 and 4) and Exhibit 35 (FED000059_001-002 at 001).

⁵⁸ See, generally, FICO0056861-7179 at 6950, 6954 and 7049.

⁵⁹ Federal Insurance Company Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 8; Taylor Deposition at 18-19, 74, 81-85, Exhibit 32 (FED013551_001-012 at 001-002), Exhibits 18 (The Chubb Corporation 2014 Form 10-K at 3 and 4) and Exhibit 37 (FED000058_0001-12 at 006).

wholly-owned by Federal, and of these twelve (12) subsidiaries, several wrote and issued insurance policies with applications using Blaze Advisor between 2016 and 2019. (See **Schedules 12.0, 14.3, 14.4 and 14.5**).

35. Similarly, ACE American has fourteen (14) domestic and two (2) foreign entities that Chubb Limited reports on a consolidated basis in 2018.⁶⁰ All are wholly-owned by ACE American, and of these sixteen (16) subsidiaries, several wrote and issued insurance policies with applications using Blaze Advisor between 2016 and 2019. (See **Schedules 12.0, 15.1, 15.2 and 15.3**).

c) *Pooling Agreements*

36. The pooling arrangements between Defendants and the members of their pools also demonstrate that these groups of entities are a single economic unit rather than independent businesses. Pooling arrangements are characterized by the sharing of premiums, losses and expenses among a group of participant companies, and I understand that the terms are typically memorialized by an intercompany agreement describing the pool.⁶¹ In fact, most of the pool members for both ACE American and Federal are also their wholly-owned subsidiaries. (See **Schedule 16.0**).

37. I understand from Bick Whitener, FICO's industry expert, that insurance companies operating under a pooling agreement function as a single business with the insurance company identified as the pool leader at the head. According to Mr. Whitener, the lead company (e.g., Federal) is typically responsible for staffing, planning, executing, and monitoring of the business model of the member companies, aggregating the financials of each individual pool member into a consolidated set of financials and then allocating the elements of the consolidated financials back to the pool members based on the agreed allocations per the pooling agreement.

38. Pooling agreements are used within a group of insurance companies to allow shared services (e.g., IT, HR, finance/accounting, underwriting) to be staffed and managed by the pool leader but paid for by the pool members in concert with the previously mentioned allocation method defined in the pooling agreement. Further, the pooling agreement allows individual

⁶⁰ See **Schedule 15.3**.

⁶¹ A.M. Best Methodology, "Rating Members of Insurance Groups," December 15, 2014, at 7; INA Holdings, Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 30; Interview of Bick Whitener.

companies to satisfy, among other requirements, the regulatory requirements of each state where it wants to do business (e.g., filing of product definitions such as rates, rules, and forms with a state's Department of Insurance) and to allow the members of the pool to offer specific insurance products. I understand that each state where the lead wants to offer insurance requires a state-specific Certificate of Authorization for which the entity must satisfy certain criteria (e.g., surplus requirements, solvency ratios). I understand that the aggregated financial assets of the pool are allocated back to the pool member in order to satisfy these requirements, including the "premium to surplus" ratio, an indicator of the company's ability to pay policy-holder claims and remain solvent.⁶²

39. According to Mr. Whitener, even though each insurance policy is underwritten by an individual writing company and displays that individual writing company's name on the policy Declarations page, the policy is ultimately managed, serviced and insured by the pool's lead company's assets (e.g., human capital, financial assets and otherwise) rather than any individual insurance company within the pool. In this way, the pool lead and members function as a single business unit despite the number of individual writing companies that comprise the pool.⁶³

(1) Pre-Acquisition Pools

40. Before the Acquisition, Chubb Corp participated in intercompany pooling arrangements involving Federal and ten Federal subsidiaries.⁶⁴ I understand all but one (1) of Federal's eleven (11) domestic subsidiaries in 2014 participated in this intercompany pool or were "fully reinsured by pool members."⁶⁵ A.M. Best described these eleven (11) subsidiaries plus three (3) foreign

⁶² Interview of Bick Whitener.

⁶³ Interview of Bick Whitener

⁶⁴ A.M. Best, "YE 2015 Federal Insurance Company (002084) Best's Credit Report Archive, Business Profile for Chubb Corp; Audited Consolidated Financial Statements – Statutory Basis Consolidated Information – Statutory Basis Supplemental Disclosures, The Chubb Corporation U.S. Property and Casualty Insurance Group, Years Ended December 31, 2014 and December 31, 2013 at 25.

⁶⁵ FED000059_0001-0002 at 0002; A.M. Best, "YE 2015 Federal Insurance Company (002084) Best's Credit Report Archive, Business Profile for Chubb Corp. Only Chubb Investment Holding, Inc. did not participate in the pooling arrangement. The three companies reinsured by pool members included Chubb Insurance Company of New Jersey, Texas Pacific Indemnity Company, and Chubb Lloyds Insurance Company of Texas (i.e., domestic Federal affiliate).

Federal subsidiaries as “strategic to the overall [Chubb] group strategy.”⁶⁶ (See **Schedules 14.2 and 16.0**).

41. Consistent with these pooling arrangements, Federal, through its division Chubb & Son, provided services to Federal and other members of the pool. These services were memorialized in a series of service agreements, and I understand Chubb & Son and certain Federal subsidiaries shared expenses and liabilities involved in writing and issuing insurance policies.⁶⁷

42. ACE American also participated in pooling arrangements with several ACE Limited subsidiaries.⁶⁸ All of the ACE Limited’s subsidiaries domiciled in Pennsylvania (including ACE American) participated in the “ACE USA underwriting pool,” and the remaining subsidiaries outside of Pennsylvania ceded “essentially all of their underwriting results” to the pool through “quota share agreements.”⁶⁹ INA Holdings’ (ACE Limited’s parent) financial position, results of operations and cash flows were represented by the combined results of these subsidiaries.⁷⁰

(2) Post-Acquisition Pools

43. Federal continued to participate in the “Federal Pool,” which included Federal plus eight (8) of its subsidiaries.⁷¹ Two (2) more Federal subsidiaries participated in a reinsurance agreement in which each ceded “100% of its business to Federal” or Great Northern, a Federal subsidiary that participates in the Federal Pool.⁷² (See **Schedule 16.0**).

⁶⁶ The Federal foreign subsidiaries included: Chubb Insurance Company of Europe SE, Chubb Insurance Company of Canada and Chubb Insurance Company of Australia Limited.

⁶⁷ Taylor Deposition at Exhibit 28 (FED013554_0001-002 at 001); Taylor Deposition at Exhibit 29 (FED013553_0001-004 at 001 and 003); Taylor Deposition at Exhibit 30 (FED013538_0001-0005 at 001 and 004); Taylor Deposition at Exhibit 31 (FED013552_0001-013 at 001-002, 004, 006); Taylor Deposition at Exhibit 32 (FED013551_0001-012 at 001 and 003).

⁶⁸ INA Holdings, Combined Statutory Financial Statements, December 31, 2015 and December 31, 2014 at 7.

⁶⁹ INA Holdings, Combined Statutory Financial Statements, December 31, 2015 and December 31, 2014 at 7. A quota share agreement is a “prorata reinsurance contract in which the insurer and reinsurer share premiums and losses according to a fixed percentage. (<https://www.investopedia.com/terms/q/quota-share-treaty.asp>).

⁷⁰ INA Holdings, Combined Statutory Financial Statements, December 31, 2015 and December 31, 2014 at 7.

⁷¹ Federal Insurance Company Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 26-27.

⁷² Federal Insurance Company Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 26-27.

44. The Federal Pool was terminated as of January 1, 2018 but was “replaced by [a] new Chubb Intercompany Pool and Quota Share reinsurance agreements” (the “Chubb INA Pool”).⁷³ Consistent with its ratings methodology, A.M. Best gave all of Chubb Limited’s U.S. subsidiaries, including Federal and ACE American, the same “Rating,” “Outlook,” and “Action” effective December 2018.⁷⁴

45. ACE American continued to participate in the “ACE USA underwriting pool” after the Acquisition and kept the same general relationships with the pool members domiciled inside and outside of Pennsylvania.⁷⁵ The ACE USA underwriting pool was ultimately terminated and replaced by new the Chubb INA Pool.⁷⁶ These companies’ combined results of operations and cash flows continued to represent the financial position of INA Holdings, and all of these companies were indirect wholly-owned subsidiaries of Chubb INA Holdings and/or Chubb Limited as of year-end 2017.⁷⁷ (See **Schedule 16.0**).

46. ACE American also replaced Chubb & Son and now provides the same services to Federal, Federal’s subsidiaries and members of the Chubb INA Pool (formerly Federal and ACE American underwriting pools) as described in the new service agreements.⁷⁸

⁷³ Federal Insurance Company Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 26-27; Federal Insurance Company Annual Statement, December 31, 2018 at 14.33; ACE American Insurance Company Annual Statement, December 31, 2018 at 14.38.

⁷⁴ Best’s Credit Ratings for Group Members, Chubb U.S. Group of Ins Cos (000012); A.M. Best Methodology, “Rating Members of Insurance Groups,” December 15, 2014, p. 7. A.M. Best typically assigns “the same rating and Financial Size Category, based on their consolidation.”

⁷⁵ INA Holdings, Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 7. The list of subsidiaries in 2017 excluded Bank Standard Fire and Marine Company, which merged with Bankers Standard Insurance Company.

⁷⁶ Federal Insurance Company Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 26-27; Federal Insurance Company Annual Statement, December 31, 2018 at 14.33; ACE American Insurance Company Annual Statement, December 31, 2018 at 14.38.

⁷⁷ INA Holdings, Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 7,11; Taylor Deposition at Exhibit 40 (Chubb Limited 2017 Form 10-K Exhibit 21.1). Texas Pacific Indemnity merged with Pacific Indemnity reducing the number of pool members. Northwestern Pacific Indemnity was sold effective February 12, 2014, which also reduced the number of pool members post-acquisition.

⁷⁸ Taylor Deposition at Exhibit 28 (FED013554_0001-002 at 001); Taylor Deposition at Exhibit 29 (FED013553_0001-004 at 001 and 003); Taylor Deposition at Exhibit 30 (FED013538_0001-0005 at 001 and 004); Taylor Deposition at Exhibit 31 (FED013552_0001-013 at 001-002, 004, 006); Taylor Deposition at Exhibit 32 (FED013551_0001-012 at 001 and 003).

d) *Consolidated Income Tax Returns – Post Acquisition*

47. Consistent with Defendants' subsidiary and pooling relationships, since January 1, 2017, Federal and ACE American's federal income tax returns are consolidated with each other, Chubb INA Holdings, Inc., and INA Holdings, Inc., among others.⁷⁹ This consolidated U.S. tax return is inclusive of the direct and indirect subsidiaries of Chubb Group Holdings, Inc., a wholly-owned subsidiary of Chubb Limited.⁸⁰

48. I understand that the Internal Revenue Service allows, but does not require, corporations to file a consolidated tax return with their subsidiaries.⁸¹ The choice to file in a consolidated manner is similar to the accounting reporting requirements promulgated by FASB, which suggests that a corporation and its legal entities are to be viewed in singularity, even if the corporation achieves its business objectives through multiple entities. Additionally, corporations can file a consolidated tax return only if certain stock ownership and voting requirements are satisfied and each subsidiary has consented and authorized its inclusion in the consolidated return.⁸²

49. A consolidated federal corporate tax return (i.e., Form 1120) combines the financial operations of each entity together to arrive at a single taxable income figure.⁸³ I understand there are several advantages to a consolidated tax return, including the ability to offset the losses of one entity with the profits of another entity.⁸⁴

e) *Economic Benefits of Single Economic Unit*

50. Defendants benefit economically from the operations of their writing company subsidiaries and writing company entities in their pooling arrangements. The economic reality is that the Defendants, their subsidiaries, and their pooling entities are a single economic unit rather than

⁷⁹ ACE American Insurance Company, Annual Statement, December 31, 2017 at 14.8-14.9.

⁸⁰ ACE American Insurance Company, Annual Statement, December 31, 2017 at 14.9-14.10; FED000058_0001-0012 at 0002, 0004.

⁸¹ See, generally, 26 U.S. Code Subchapter A – IRC § 1501 Privilege to File Consolidated Returns (<https://www.law.cornell.edu/uscode/text/26/1501>).

⁸² See, generally, 26 U.S. Code Subchapter A – IRC § 1501 Privilege to File Consolidated Returns (<https://www.law.cornell.edu/uscode/text/26/1501>); 26 U.S. Code Subchapter A – IRC § 1504 Definition (<https://www.law.cornell.edu/uscode/text/26/1504>).

⁸³ See, generally, 26 U.S. Code Subchapter A – IRC § 1503 Computation and Payment of Tax (<https://www.law.cornell.edu/uscode/text/26/1503>).

⁸⁴ See, generally, 26 U.S. Code Subchapter A – IRC § 1552 Earnings and Profits (<https://www.law.cornell.edu/uscode/text/26/1552>).

independent businesses. Specifically, Defendants acknowledge this economic reality by reporting to the NAIC on a consolidated basis and by filing consolidated federal income tax returns. Accordingly, Defendants, their subsidiaries, and their pooling entities are, in turn, part of a larger single economic unit consolidated with Chubb INA Holdings, Inc.

B. Software License and Maintenance Agreement

i. Original Agreement

51. On June 30, 2006, FICO and Chubb & Son, a division of Federal, entered into a non-exclusive, perpetual software license and maintenance agreement granting rights to use Blaze Advisor (“SLM Agreement”) in conjunction with CSI eXPRESS (defined below) in the United States.⁸⁵ The SLM Agreement granted Chubb & Son a Blaze Advisor “Named Application” license for the “CSI Express application (which is Chubb’s Specialty Insurance’s underwriting and automated policy renewal application) and its supporting systems, applications...” for a one-time fee of [REDACTED]⁶

52. [REDACTED], in exchange for certain services involving Blaze Advisor.⁸⁷ The SLM Agreement also contemplated that FICO would continue to support Chubb & Son and maintain Blaze Advisor going forward for the same amount per year.⁸⁸

53. In addition, the SLM Agreement included two options for Chubb & Son to expand its licensed usage. One option was a one-month option to expand the scope from a “Named Application” to a “Divisional ELA” license for “use within [Chubb & Son] Specialty Lines insurance division” for an additional deployment license fee of [REDACTED]. Under the terms of the Divisional ELA, FICO granted Chubb & Son ten (10) development seats

⁸⁵ Deposition of Russel Schreiber, dated October 24, 2018 (“Schreiber Deposition”) at Exhibit 110 (FICO0001702-722 at 702, 712, 714). Territory as defined in the SLM Agreement is “with respect to the installation and physical location” of FICO’s products.

⁸⁶ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 702, 712); Deposition of William Paul Waid, dated January 16, 2019 (“Waid 1/16/19 Deposition”) at 87.

⁸⁷ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 702, 704, 712).

⁸⁸ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 712-715).

⁸⁹ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 712). I understand that ELA is acronym for Enterprise License Agreement.

and “unlimited internal use of the Fair Isaac Blaze Advisor® Deployment Product” but only for the “Specialty Lines insurance division.”⁹⁰ Divisional licenses as the term is used by FICO typically cover a small function within a line of business and does not include a far reaching scope.⁹¹ The option also [REDACTED] the SLM Agreement.⁹²

54. The second alternative involved a one-year option to convert the SLM Agreement into an enterprise-wide license that would grant Chubb & Son rights to “an unlimited number of Seats or CPU’s” for internal use of Blaze Advisor.⁹³ The option did not specify a licensee fee, but instead, allowed Chubb & Son to apply amounts already paid towards the price of a new enterprise license.⁹⁴

ii. Amendments

55. On August 1, 2006, Chubb & Son exercised its option to convert the SLM Agreement to a Divisional ELA for a total deployment license fee of [REDACTED] in annual support and maintenance fees.⁹⁵ Amendment No. 1 to the SLM Agreement granted Chubb & Son a perpetual license to Blaze Advisor “for use solely by the Chubb Specialty Lines Divisions” but with “no other limitation.”⁹⁶

56. Chubb & Son exercised the option to convert the SLM Agreement to an enterprise-wide license on December 28, 2006.⁹⁷ Amendment No. 2 to the SLM Agreement granted Chubb & Son an unlimited (i.e., in terms of Seats or CPUs), perpetual license to Blaze Advisor for a net or incremental deployment license fee of [REDACTED]
[REDACTED].⁹⁸

⁹⁰ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 712).

⁹¹ Waid 1/16/19 Deposition at 31, 37-38. “Line of business” is an insurance industry term that generally refers to a group of products that are managed as a whole.

⁹² Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 712).

⁹³ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 702, 712).

⁹⁴ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 713).

⁹⁵ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 721); Waid 1/16/19 Deposition at 88. FICO applied the [REDACTED] towards the deployment license fee.

⁹⁶ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 721).

⁹⁷ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 718).

⁹⁸ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 718); Waid 1/16/19 Deposition at 88-89. FICO applied the [REDACTED] paid towards the deployment license fee.